July 3, 2019

Via Electronic Comment Filing System

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Transforming the 2.5 GHz Band, WT Docket 18-120, Ex Parte Filing

Dear Ms. Dortch:

Sprint Corporation ("Sprint") submits this response to AT&T's June 28, 2019 letter[1] proposing significant and unwarranted changes to the Draft Order in the above-referenced proceeding.[2]

AT&T proposes that (1) incumbent Educational Broadband Service ("EBS") licensees and lessees be required to provide detailed technical information about their current and future deployments at 2.5 GHz as well as the terms of their lease arrangements, enabling AT&T to obtain insight into commercially sensitive terms, conditions, and contractual rights and obligations; and (2) all EBS lessors and lessees, not just 2.5 GHz licensees who acquire spectrum at auction or through the Tribal window, be required to meet more extensive performance requirements than are currently required under FCC rules. AT&T has failed to justify these requests, which are beyond the scope of this proceeding and inconsistent with the intent of the Draft Order. Accordingly, the Commission should reject AT&T's self-serving effort to substantially modify the Commission's Draft Order.

The FCC Should Reject AT&T's Request to Obtain Confidential Technical Information and Confidential Private Contracts

For over a year, AT&T has sought unjustified access to the terms and conditions of the private, long-term contractual arrangements between EBS lessors and Sprint and the confidential information contained therein.[3] AT&T previously sought to obtain this information as part of its

---

1 *See* Letter dated June 28, 2019 from Alex Starr, AT&T Services, Inc. in WT Docket 18-120. ("AT&T Letter").

2 Transforming the 2.5 GHz Band, Report and Order, WT Docket 18-120 (rel. June 19, 2019) ("Draft Order").

3 *See* AT&T Comments at 8-9 (August 8, 2018), AT&T Reply Comments at 8 (September 7, 2018).

advocacy for an incentive auction at 2.5 GHz. There, AT&T claimed that it needed such information to evaluate how much spectrum might become available in such an incentive auction. In its Draft Order, the FCC rejected AT&T's calls for an incentive auction, specifically noting the complications and disruptions that would result from such disclosures and 2.5 GHz incumbents' consequential lack of interest in incentive auctions.[4]

The Draft Order would instead adopt the NPRM's lead proposal of an overlay spectrum auction that assigns full and partial counties containing available EBS "white space," subject to protection of existing incumbent licensees.[5] AT&T now responds to the Commission's apparent rejection of an incentive auction with another self-interested effort to gain access to the terms of Sprint's and EBS licensees' private contractual arrangements and detailed deployment information. In support, AT&T misguidedly claims that the Commission's overlay auction would fail unless prospective bidders have a complete understanding of the current and future leasing and deployment plans of incumbent operators. In fact, AT&T's real motivation is likely its desire to extract information it has no legal right to obtain, in order to maximize its ability to purchase EBS incumbent licenses spectrum post-auction.

Sprint opposes any Commission action that would require Sprint or its EBS leasing partners to disclose to AT&T or other auction participants the terms and conditions of their private contracts or the technical parameters of their current or future 2.5 GHz deployments.

As a sophisticated commercial operator and FCC auction participant, AT&T does not need this information to evaluate the 2.5 GHz licensing environment or the protection it would be required to provide to EBS licensees and lessees were it to become a 2.5 GHz licensee. First, Part 27 co-existence rules for 2.5 GHz licensees throughout the band are well developed and

---

4 Draft Order at ¶¶ 82-86.

5 As the Commission acknowledges in ¶ 78, this may not result in significant auctionable spectrum in major population centers, but should result in clean auctionable spectrum in smaller and more rural markets.

have been in existence for years.[6] These rules include provisions governing how auction overlay licensees must protect incumbent EBS and BRS operators.[7] Second, while the licensing environment at 2.5 GHz is no doubt complex, a dominant operator like AT&T surely has the capability to download the necessary data files from ULS to map and analyze each channel prior to auction. In fact, through ULS, *any* applicant can determine where potential white space areas are available and where incumbent licensees' protected geographic service areas will remain and require protection -- all without access to third-party provided technical information or leases. Third, AT&T does not need the technical site parameters and coverage information of individual site locations within Sprint's or any other operator's network to evaluate auctioned white space areas. As the Commission repeatedly stated in the Draft Order,[8] a new licensee in the EBS white spaces has an obligation to protect any pre-existing licensed geographic service area. Fourth, AT&T does not offer any reason why it would need an existing licensee's or lessee's *future* deployment plans, or how such information would even be compiled and provided to Sprint's direct competitor or any other 2.5 GHz bidder. For each of these reasons, the FCC should reject AT&T's call for mandatory incumbent disclosure of technical information regarding current and future operations at 2.5 GHz.

The FCC Should Not Impose New Performance Requirements on Existing EBS Licensees and Their Leasing Partners

The Draft Order would adopt performance requirements for new 2.5 GHz licenses (*i.e.*, licenses issued to Tribes and overlay auction winners).[9] These new performance requirements (50% interim, 80% final) are set at higher benchmark levels than currently exist for BRS and

---

[6] In fact, a predecessor in interest of AT&T (Bell South) was formerly both a licensee and lease-holder in the 2.5 GHz band and was an active participant in 2.5 GHz rulemaking proceedings that led to the Commission's regulatory framework in the band.

[7] Notably, in the most recent auction of 2.5 GHz Broadband Radio Service spectrum (Auction 86) (held in 2009), where the Commission auctioned BRS Basic Trading Area licenses subject to the rights of existing EBS/BRS incumbent licensees, the Commission did not require incumbent EBS and BRS operators to provide prospective bidders with additional information regarding their operations in their licensed service areas.

This Commission action was entirely consistent with past auctions where the Commission issued overlay licenses with the requirement to protect existing operations. *See* 800 MHz Auctions: Auction 16 ("Upper-200" 800 MHz Specialized Mobile Radio Auction), Auction 34 ("Lower 150 Channel" 800 MHz Specialized Mobile Radio Auction), Auction 36 ("Middle 80" 800 MHz Specialized Mobile Radio Auction), Auction 43 (Multi-Radio Service); *See* 900 MHz Auctions 7 and 55 (900 MHz). In none of these previous auctions did the Commission require incumbents to provide information to the Commission or to bidders. Instead, auction applicants were advised to do their own due diligence in evaluating the utility of the auctioned spectrum.

[8] Draft Order at ¶ 46, ¶ 55, ¶ 77 and ¶ 81.

[9] Draft Order at ¶ 99.

EBS incumbents under Section 27.14(o) of the Commission's Rules. A Commission decision to impose different obligations on different classes of licensees would be entirely consistent with its proposal in the NPRM.[10] Sprint does not oppose adopting new performance requirements for any new 2.5 GHz licenses.

In the Draft Order, the FCC makes the well-considered, record-based decision to not impose these new performance obligations on existing EBS licensees.[11] Acknowledging that incumbent licensees have already satisfied existing performance standards, the Draft Order provides that incumbent licensees may continue to use those standards for future renewal showings, subject to the same WRS framework (adopted in 2017) that applies to other wireless service licensees.[12] The Commission correctly states in the Draft Order that "it would create confusion and inconsistency" to evaluate whether incumbent licenses should be renewed based on a build-out standard never applied to (or met by) holders of those licenses.[13]

As the Draft Order recognizes, existing EBS licensees have previously met all applicable performance requirements for their licenses.[14] Where the 2.5 GHz EBS spectrum has been licensed, it has been put to extensive use, even if the Commission's substantial service standard did not require as robust a build-out as delineated in the Draft Order. Given the Commission's decision not to expand or rationalize EBS geographic service areas to authorize additional operational territories, it would seem inappropriate and untimely to now impose a new, higher benchmark for ongoing compliance, especially when the NPRM did not contemplate this new standard for existing licensees.

For all of these reasons, the Commission should not modify the Draft Order to impose new obligations on existing licensees or their leasing partners.

---

10 *See* Transforming the 2.5 GHz band, Notice of Proposed Rulemaking, WT Docket 18-120 (May 2018) at ¶54. (In a section entitled Performance Requirements for New 2.5 GHz Licensees, the NPRM states "We propose more robust performance requirements for any new 2.5 GHz licenses granted through a local priority filing window or a system of competitive bidding.").

11 Draft Order at ¶ 99.

12 Draft Order at ¶ 103 and ¶ 108.

13 Draft Order at ¶ 110.

14 Draft Order at ¶ 99, footnote 284.

Pursuant to Section 1.1206 of the Commission's Rules, Sprint hereby files this *ex parte* letter into the docket of the above-referenced proceeding.

Respectfully submitted,

/s/ James B. Goldstein

James B. Goldstein
Gardner Foster
Senior Counsel, Government Affairs
Sprint Corporation
900 7TH Street, Suite 700
Washington, DC 20001
Tel: (703) 433-4212
E-Mail: James.Goldstein@sprint.com

cc: Nicholas Degani
Aaron Goldberger
Will Adams
Umair Javed
Erin McGrath
William Davenport